

Kira Spirydonova
 Postgraduate student,
 International Relations and Foreign Policy Chair,
 Institute of International Relations,
 Taras Shevchenko National University of Kyiv.

PRINCIPLE OF FREEDOM OF MOVEMENT AS A COMMON VALUE IN THE PROCESS OF THE SECURITY COMMUNITY BUILDING WITHIN THE OSCE

Summary. The article handles with the issue of ensuring and interpretation of the principle of freedom of movement within the OSCE (previously – CSCE) in general and its particular participants, and how it affects bilateral and multilateral relations among the participating States of the Organization. Used methodology includes main constructivist approaches in the international relations theory on the role of common values and norms in ensuring human rights within the OSCE participant States. The main attention is drawn to the postulates of the cooperative security approach, particularly by focusing on dimensional parameters of indivisible security all over the area from Vancouver to Vladivostok.

Keywords: security community, freedom of movement, OSCE, constructivism.

From the constructivist approach in international relations theory all international political phenomena are socially constructed due to the influence of common norms, rules, values and identity on the actor and structure (both internal and external). In this context international community expects something more from such projects as security communities, and not only traditional balance of power. Common «we feeling» and self-identification [8] have to influence on foreign policy and determine the behavior of states in the international stage even more than the available resources and traditional balance of power. Control on the values and norms spread in society contributes to the changing of the threats perception and leads to the formation of new priorities and interests of states as the main actors in international relations.

We propose to look over the ensuring of the principle of freedom of movement as one of such norms and values within the general process of the security community building in OSCE area, where with the proclamation in 2010 Astana Commemorative Declaration was set an ambitious goal to reach a real security community in Euro-Atlantic and Eurasian region [1].

The principle of the freedom of movement within the OSCE is one of the most controversial human dimension issues that are discussed within the 57 participant States from the very beginning of the activity of the Conference for Security and Cooperation in Europe in 1973. During 40 years of the OSCE's functioning, the perception of the issue changed drastically because of historical events that took place on the European continent.

In 1970^s the problem of the migration of Jewish population from the USSR led to the adoption of the Jackson–Vanik amendment in 1974 in the US towards non-market economies that restricted freedom of emigration and other human rights of their population [9]. The issue was at the same discussed in the CSCE in the context of supporting human contacts between separated Germanies and rights of the internally displaced persons (IDPs) within one state (mostly presented in the form of the critics by the NATO of the Warsaw Pact states). The process of the discussion finished with the mentioning in the Helsinki Final Act that the participant States commit themselves «*to facilitate freer movement and contacts, individually and collectively, whether privately or officially, among persons, institutions and organizations of the participating States, and to contribute to the solution of the humanitarian problems that arise in that connexion*» [6].

Nowadays the term freedom of movement is used by OSCE participating States to describe a wide range of topics that concern the right of all people to leave and return to their state, and to move freely within the borders of their own state. It also covers the rights of foreigners to unrestricted movement within state borders and the facilitation of freer cross-border movement and contacts among people, institutions and organizations in participating States [5].

It is recognized that the right to freedom of movement must be guaranteed by participating States to their citizens and lawfully residing foreigners within their territories, even if it is not exercised by all. It is generally acknowledged that

every citizen should be free to run for public office, even if not all people take up the opportunity, or that the right to fair trial must be provided, even if most of us may not have to make use of it (as ensuring freedom of expression, right to participate in public life of the country etc.). By analogy, the right to freedom of movement is equally essential, as it enables the free choice of place of residence inside a country, and is often the pre-requisite for the exercise of many other fundamental rights, such as the right to education, the right to work and the right to family life. Also, the right to freedom of movement is a pre-condition for equality of opportunity, which allows people to pursue their personal and professional goals and dreams.

Used methodology includes main constructivist approaches in the international relations theory on the role of common values and norms in ensuring human rights within the OSCE participant States. Systemic approach and comparative analysis are used, particularly while qualifying the main differences in interpretation by different actors of the same principles and commitments. The main attention is drawn to the postulates of the cooperative security approach, particularly by focusing on dimensional parameters of indivisible security all over the area from Vancouver to Vladivostok.

All OSCE participating States have committed themselves to respect the internationally recognized human rights to freedom of movement and residence within the borders of each state, as well as to leave any country, including one's own. In the 1990 Copenhagen Document, the states also affirmed that *«freer movement and contacts among their citizens are important in the context of the protection and promotion of human rights and fundamental freedoms»* [4].

A problematic issue, common almost for every participating State in the OSCE, is ensuring the right to freedom of movement in connection to other fundamental human rights and freedoms for Roma and Sinti population – representatives of large European minorities that have their own traditions, sometimes incompatible with legal provisions of the state. For instance, it is very difficult for a state to guarantee the right for education for Roma and Sinti children while their parents tend to change families' place of residence constantly (which is also one of the forms of the right to freedom of movement that cannot be constrained).

Among other commitments of the participating States in the field of the freedom of movement are the ones also mentioned in the Helsinki Final Act of 1975. However, with the time passed, for participating States their meaning and interpretation have changed. Besides the mentioned issue

of the Roma and Sinti population, a controversial question remains principle of contacts and regular meetings on the basis of family ties.

As stipulated in the HFA, *«In order to promote further development of contacts on the basis of family ties the participating States will favourably consider applications for travel with the purpose of allowing persons to enter or leave their territory temporarily, and on a regular basis if desired, in order to visit members of their families... They will take such steps as may be necessary to ensure that the fees for official travel documents and visas are acceptable»* [2].

During Final Act's negotiation process, as well as till the very fall of the Berlin Wall in November 1989, this principle was primarily related to the issue of divided German families, which became victims of the occupation of Germany and its further collapse into different German states – the Federal Republic of Germany and the German Democratic Republic. As the process of the Dätate reached its top at the beginning of the 1970th with the signing of the Basic Treaty between the Western and Eastern Germanies in 1972, oral advances and agreements should have been guaranteed and fixed in international documents. It became possible in Helsinki in 1975.

After the unification of Germany the core of the problem on the Eurasian continent passed to the Central Asia, where as a consequence of civil wars in respective states, families appeared to be divided and citizens had no possibility to travel for personal reasons even to some of the neighboring countries.

Even now, after more than twenty years as dividing lines in Europe should have been removed, there still is a plenty of problems between such neighbors as Tajikistan and Uzbekistan. Due to unresolved border issues and all the consequences of complicated relations of Tajikistan and Afghanistan, strict Tadjik-Uzbek visa regime affects the family relationships in these two countries. Even in 2014 the issue is still not resolved and there are no prospects for its resolution in the nearest future.

As for now, the principle of the freedom of movement, mostly concerning its aspect of the travels for personal or professional reasons, remains a contradictory issue, as the Schengen area expands and becomes an additional obstacle for non-EU citizens. The issue is strongly appealed by the Russian Federation in the context of the visa-free regime's negotiations with the EU, referring to such OSCE documents as 1983 Madrid Concluding Document, 1989 Vienna Concluding Document, 1990 Copenhagen Document, 1990 Charter of Paris for a New Europe, 2005 Ljubljana Document, where the OSCE

participating States reaffirmed the obligations and commitments on border-related issues that they have undertaken at all levels.

The most controversial issue in the implementation of the abovementioned commitments of participating States is their interpretation and positioning by non-EU states. Since 2007, as Schengen area expanded to Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia, the countries of the “East of Vienna” regularly appeal to the visa-free dialogue with the EU. During OSCE events dedicated to the issues of human dimension delegations of the Russian Federation, Belarus, Tajikistan, Uzbekistan, Armenia, Kyrgyzstan draw attention to the necessity of renewal of the process of the liberalization of visa regimes and possible adoption of a Ministerial Decision on this issue.

However, under conditions of the absence of consensus among 57 participating States on adoption of a relevant decision, the only way to bring attention to the issue is annual OSCE Human Dimension Implementation Meeting (where, traditionally, one of the sessions on fundamental freedoms is dedicated to the freedom of movement; last time in 2011 freedom of movement was selected as a special topic for the meeting) and Chairmanship events.

At the same time, the main problems in the interpretation of the principle of ensuring by the participating States of freedom of movement remain the same – between the positions of the Russian Federation and European Union, which we propose to examine below.

For the Russian Federation the main formal reason of facilitation of a greater freedom of movement and cross-border human contacts across the OSCE region is that it would provide a boost to business and tourism, as well as cultural exchange and people-to-people interaction [4]. To this end, Russia encourages the OSCE participating States to review the progress made with regard to implementing OSCE commitments on freedom of movement and human contacts, and to invest further efforts in removing visa barriers, which currently draw dividing lines across the OSCE region.

Acknowledging the risks associated with visa liberalization, in particular to OSCE participating States which experience significant migration, progress towards the ultimate objective of visa-free travel must be made through a gradual and well thought-through process, which includes institutional adjustment and certain flanking measures [4].

The European Union stands on a position that freedom of movement is a fundamental human right, which forms part of the core values of the EU both in terms of internal movement and in

its relations with third countries. In the context of internal procedures even for the EU itself the implementation of the norms necessary to enter the Schengen area are considered obstacles for newly adopted member states.

The EU is strongly committed to dialogue with third countries, and has therefore adopted the Global Approach to Migration and Mobility (GAMM). To date, the EU is engaged in structured bilateral dialogues and cooperation on migration and mobility with more than 25 countries, including in the OSCE area. The Union appeals to the fact that there are no OSCE commitments on visa-free travel and therefore the issues related to visa regimes are and will continue to be dealt with through agreed and appropriate channels outside the OSCE framework.

Among good practices of the EU cooperation with other European states are the Local Border Traffic regimes, which allow populations residing in border areas and in possession of a special document to move across the external EU frontier visa-free; Visa Facilitation Agreements, which have been signed between the EU and nine OSCE participating States and Mobility Partnerships, currently concluded with four OSCE participating States. With regard to the ultimate objective of visa liberalization dialogue – a visa-free regime, it is only possible, where conditionalities set forth by the EU, such as proper rules on document security, migration and border management, public order and security as well as external relations and human rights, are met. This norm convergence compelled countries in South Eastern Europe to introduce a set of core reforms. The EU also considers it a positive step of the way towards democratization processes and another evidence of the values’ dissemination on the European continent.

At the same time, for EU and US still remains room for criticism over the Russian Federation and other authoritarian regimes on unnecessary denial or restriction of the right to freedom of movement and residence within the borders of a state, still practiced by a few OSCE participating States, which does not constitute acceptable practice.

On the other hand, Russia argues this idea, explaining that limitations upon travel of persons in possession of state secrets and confidential information still exist in different states, among which also are some of the EU-members.

By the EU side a visa requirement *per se* is not a restriction upon freedom of movement, and, as such, is not inconsistent with increased travel. They emphasize that the Schengen area of free movement is an unprecedented achievement and that relevant EU legislation is fully in line with relevant human rights standards; where challenges

arise, they rather stem from an inconsistent application of legal norms among the EU Member States. In this context the national visa policies of OSCE participating States other than those comprising the Schengen area, leave room for further improvement (another idea which is argued by another OSCE participant State – Great Britain, as non-member of the Schengen area).

Challenges related to the provision of the right to freedom of movement to vulnerable groups, such as internally displaced persons (IDPs) and populations residing in conflict areas also appear (the issue really relevant for Ukraine in current situation). In this context there are proposals to develop protection-sensitive border management systems, in line with relevant OSCE commitments, and to abide by the principle of *non-refoulement* as part of customary international law. The displacement itself constitutes, in fact, absence of freedom of movement, as people are forced to leave their places of residence and are, in many cases, barred from return.

Good practices in the facilitation of cross-border travel, such as the introduction of visa-free travel for holders of diplomatic passports, electronic visa applications, the unilateral exemption of other participating States from visa requirements, the conclusion of readmission agreements and an overall simplification of procedures for entry and stay of foreigners in the country are an achievement of last 40 years within the area from Vancouver to Vladivostok since the adoption of the Helsinki Final Act.

In general, most of the OSCE participating States agree that freedom of movement constitutes a basic fundamental right, which is integral to the human dimension of the OSCE. It cannot be considered without close connection to the possibility to move across borders, which is also the cornerstone of humanitarian and asylum systems.

Ukrainian experience. Not even mentioning the regular practice of respective Ukrainian authorities on ensuring the freedom of movement for its citizens (in all areas – as an internal procedure as well as in relations with other states), the gravest problem for Ukraine in the current situation – after the illegal annexation by the Russian Federation of the Crimean peninsula and obvious support of anti-Ukrainian paramilitary movements in the eastern part of Ukraine – is ensuring the freedom of movement within the country's borders.

The policy of the Russian Federation as the power, which *de facto* controls the territory of Crimea, in the abovementioned field represents a threat not only for Ukrainian but also for general European security. Restrictions for Ukrainians and Crimean Tatars that don't want to be granted with

the Russian citizenship are undermining the core of the OSCE – the Helsinki Final Act.

Such loud cases as ban for the most prominent Tatar leader, former Mejlis Chairman Mustafa Dzhemilev, from entering Crimea, as well as for the actual Mejlis leader Refat Chubarov, not only violate their personal rights and freedoms but also create prerequisites for further violation of the rights of the whole national minority of Tatars in Crimea. As a consequence of the absence of the spiritual leaders and supporters in the field, the Russian authorities in Crimea have moved in September 2014 to silence and isolate the peninsula's main ethnic Tatar community and political organization, the Mejlis. Russia's government has shut down the group's headquarters in Crimea and tried to prevent Tatar representatives from attending a United Nations conference in New York on indigenous peoples [7].

Under the conditions of banning of the entering the territory of Crimea for international organizations and monitors (for instance, the OSCE Special Monitoring Mission to Ukraine) it is almost impossible to expect a significant improvement of the situation.

It is another evidence of the existence of a room for the OSCE to strict its rules and strengthen the commitments.

ODIHR activities. The specialized institution within the OSCE structures that deals with the issues of freedom of movement, as well as migration and relative topics, is the Office for Democratic Institutions and Human Rights (ODIHR). Its mandate covers the promotion of the development and implementation of legal and regulatory frameworks that respect the right to freedom of movement and free choice of place of residence [5].

In relation to cross-border mobility, the ODIHR holds researches and monitors the entry and exit policies of OSCE participating States in the context of facilitating human contacts. In case of necessity (usually upon the request of the participating State) the ODIHR can prepare recommendations to be implemented on the national level or analyze the draft laws in respective sphere. In such way the Office provides its expert assistance in concrete cases and not only in general for all governments (especially taking into account that legal norms in different countries in the OSCE area vary significantly).

ODIHR offers expertise to participating States, upon request, for the development and implementation of legal and regulatory frameworks for population registration that respect the right to freedom of movement and free choice of place of residence.

Aiming to raise awareness of the OSCE commitments relating to freedom of movement and human

contacts among citizens of participating States, ODIHR also promotes good practices in facilitating cross-border mobility, including the implementation of visa application procedures that facilitate freer cross-border travel and respect individual rights and freedoms [5].

Conclusions

Limitations to freedom of movement, often in the form of complex administrative requirements or procedures for residence registration have an impact on the ability of citizens to access services, as well as on opportunities to exercise other human rights (education, employment, housing, etc.).

Freedom of movement is a qualified right and is subject to justified and proportionate restrictions, which may be introduced for military, safety, ecological or other legitimate government interests, in accordance with their national laws, consistent with OSCE commitments and international human rights obligations. However, the OSCE participating States have pledged to keep such restrictions to a minimum.

Guaranteeing the fundamental right to freedom of movement also means that the OSCE participating States are obliged to allow their citizens to leave and return to their country. Here, conditions of issuance and possible denial to provide a person with a valid travel document sometimes render the exercise of this right unattainable.

The promotion of cross-border human contacts between citizens of participating States often gains prominence as rightfully reflects our public's expectations and is an important constituent part of the OSCE commitments in the human dimension. It can be viewed as an essential inter-and intra-State confidence-building measure from social, cultural and economic perspectives. Over the years the significant progress that the OSCE participating States have made in facilitating freer travel across borders has materialized in the establishment of various regional visa-free areas in the OSCE area. Yet, further efforts should be invested to facilitate cross-border human contacts with the aim of strengthening personal, professional, cultural, humanitarian ties between citizens, as they contribute to enhanced cooperation, increased cultural understanding and trust across the OSCE region.

While facilitation of cross-border human contacts would foster positive developments across the OSCE area, it is also obvious that in today's globalized world states are facing substantive issues with regard to undesirable forms of human movements. Negative phenomena such as movement of terrorists and money-launderers, trafficking in persons, migrant exploitation and specious asylum seekers pose considerable challenges to manag-

ing cross-border human contacts in full respect of existing international human rights obligations. The complex nature of these phenomena calls for innovative policy solutions that would effectively ban illegal activities while ensuring implementation of international human rights standards.

In this context one of the most problematic issues are the controversies between the positions of the states «West of Vienna» and «East of Vienna» on the visa liberalization due to existing restrictions of the Schengen area and its expansion to the «new» EU members, which joined the European Community in 2000th.

However, the mere fact of moving forward in one direction and the readiness of participating States to discuss such in some way technical moments (particularly, visa-related) in the future to deepen the cooperation between parties concerned reflects the process of the norm-building which is aimed at ensuring better trust between countries. The only question is whether such trust would be not undermined totally among 57 OSCE participating States after recent violations of commitments and values, gained during last 40 years.

Literature:

1. Astana Commemorative Declaration: Towards a Security Community — available at <http://www.osce.org/cio/74985?download=true>.
2. Conference on Security and Co-operation in Europe. Final Act. — Helsinki, 1975. — P. 39. — [Електронний ресурс]. — Режим доступу: <http://www.osce.org/mc/39501?download=true>.
3. Document of the Copenhagen meeting of the Conference on the Human Dimension of the CSCE. Conference for Security and Co-operation in Europe. 29 June 1990. p.13. — [Електронний ресурс]. — Режим доступу: <http://www.osce.org/odihr/elections/14304?download=true>.
4. Final report of the Supplementary Human Dimension Meeting 25 — 26 April 2013 Vienna, Austria. — [Електронний ресурс]. — Режим доступу: <http://www.osce.org/odihr/103581?download=true>.
5. Freedom of Movement / [Електронний ресурс]. — Режим доступу: <http://www.osce.org/odihr/movement>.
6. OSCE Human Dimension Commitments. Volume 1. Thematic Compilation. 3rd Edition. — OSCE Office for Democratic Institutions and Human Rights (ODIHR). — Warsaw. 2011. — P.132.
7. Rupert J. Russia Cracks Down in Crimea, Shuts Tatar Community Offices / [Електронний ресурс]. — Режим доступу: <http://www.atlanticcouncil.org/blogs/new-atlanticist/russia-moves-to-shut-down-isolate-crimeas-tatar-community>.
8. Security Communities / Ed. by E.Adler and M.Barnett. — Cambridge : Cambridge University Press, 1998. — 484 p.
9. 19 U.S. Code § 2432 — Freedom of emigration in East-West trade // [Електронний ресурс]. — Режим доступу: <http://www.law.cornell.edu/uscode/text/19/2432>.

Спиридонова К.О. Принцип свободи пересування як спільна цінність у процесі формування спільноти безпеки ОБСЄ. — Стаття.

Анотація. У статті висвітлені питання забезпечення та інтерпретації принципу свободи пересування в рамках ОБСЄ (раніше — НБСЄ) в цілому й її окремими учасниками. Визначено, як така інтерпретація впливає на дво- і багатосторонні відносини між державами в Організації. Використана автором методологія заснована на основних поглядах конструктивістської школи міжнародних відносин на роль спільних цінностей та норм у забезпеченні прав людини державами-учасниками ОБСЄ. Головна увага присвячена постулатам кооперативної безпеки, зокрема у контексті розгляду безпеки як багатовимірного та неподільного явища на просторі від Ванкувера до Владивостока.

Ключові слова: спільнота безпеки, свобода пересування, ОБСЄ, конструктивізм.

Спиридонова К.А. Принцип свободи передвиження как общая ценность в процессе становления сообщества безопасности ОБСЕ.— Статья.

Аннотация. В статье рассматриваются вопросы обеспечения и интерпретации принципа свободы передвижения в рамках ОБСЕ (ранее — СБСЕ) в целом и ее отдельными участниками. Определено, как такая интерпретация влияет на дву- и многосторонние отношения между государствами в Организации. Используемая автором методология основана на взглядах конструктивистской школы международных отношений на роль общих ценностей и норм в обеспечении прав человека государствами-участниками ОБСЕ. Главное внимание уделяется положениям теории кооперативной безопасности, в частности в контексте рассмотрения безопасности как многомерного и неделимого явления на пространстве от Ванкувера до Владивостока.

Ключевые слова: сообщество безопасности, свобода передвижения, ОБСЕ, конструктивизм.